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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION
4
5 -----
6 DAVID FERGUSON, et al., :
7 Plaintiffs, :
8 vs. : CASE NO.
9 RYDER AUTOMOTIVE, et al., : C-1-02-039
10 Defendants. :
11 -----

12
13 Deposition of: ROBERT FERRELL
14 Taken: By the Plaintiffs
15 Pursuant to Agreement
16 Date: March 13, 2003
17 Time: Commencing at 12:12 p.m.
18 Place: Kohnen & Patton LLP
19 1400 Carew Tower
20 441 Vine Street
21 Cincinnati, Ohio 45202
22 Before: Debra J. Henderson, RPR
23 Notary Public -
24 State of Ohio
25

Ace Reporting Services (513)241-3200 / (800)277-7165

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1 ROBERT FERRELL

2 of lawful age, a witness herein, being first duly
3 sworn as hereinafter certified, was examined and
4 deposed as follows:

5 CROSS-EXAMINATION

6 BY MR. KOUSTMER:

7 Q. Sir, can you please state your name and
8 spell your last name?

9 A. Robert Ferrell, F-e-r-r-e-l-l.

10 Q. Okay. And what is your date of birth,
11 sir?

12 A. 2/12/57.

13 Q. And what is your home address?

14 A. 5730 Commons Lane, Alpharetta, Georgia,
15 30005.

16 Q. Where do you currently work?

17 A. Allied Automotive Group.

18 Q. And how long have you worked there?

19 A. Five years and four months.

20 Q. So you started there in what year?

21 A. 1997, December.

22 Q. And prior to that, where did you work?

23 A. UPS Truck Leasing.

24 Q. In 1997, Allied, what were you hired in
25 as?

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1 A. Senior vice president of maintenance.

2 Q. Is that currently your title?

3 A. Senior vice president of maintenance and
4 procurement.

5 Q. And when did you also become senior vice
6 president of procurement?

7 A. I'm going to say about a year and a half
8 ago. I don't know the exact date right off of the
9 top of my head.

10 Q. Sometime in 2001, 2002?

11 A. Yes, sir. 2002, I would say. Excuse
12 me. 2001. I'm sorry.

13 Q. Prior to that, was there a senior vice
14 president for procurement?

15 A. There was a vice president of
16 procurement, that's right.

17 Q. Was that position eliminated and you
18 took it over or --

19 A. We -- it was actually another subsidiary
20 of Allied Holding, which Allied Systems -- Allied
21 Group is a subsidiary, also, and it was -- that
22 subsidiary was dissolved and taken into the Allied
23 Automotive, Allied Systems Group.

24 Q. And so your -- you've always worked for
25 Allied Automotive Group?

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1 A. That's correct.

2 Q. And that's a subsidiary of Allied
3 Holdings, Inc.?

4 A. That's right.

5 Q. Is that correct?

6 A. That's correct.

7 Q. Allied -- is there an Allied Parts?

8 A. No, there's not.

9 Q. Is there an Allied Parts Connection?

10 A. No, there's not.

11 Q. Was there one during any time?

12 A. Yes, there was.

13 Q. Okay. When was that?

14 A. I would have to -- I'm going to say back
15 in 1992 and earlier. Allied Parts. It was Allied
16 Parts Connection. It was a company-owned company
17 that supplied parts.

18 Q. Was that also owned by Allied Holdings,
19 Inc.?

20 A. I don't know, to tell you the truth,
21 because I wasn't there at that time.

22 Q. Okay. How about Sycamore Parts and
23 Logistics, Inc., was that owned by the Allied Group?

24 A. No, sir.

25 Q. Was it ever?

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1 A. Not that I'm aware of.

2 Q. Okay. How about Gill Transportations or
3 Gill Transportation?

4 A. Is it owned by Allied? Is that what
5 you're asking?

6 Q. Yes.

7 A. No, it's not.

8 Q. Was it ever owned by Allied?

9 A. No, it wasn't.

10 Q. Allied Systems, Inc., have you ever
11 worked for them?

12 A. I've always worked for Allied Automotive
13 Group.

14 Q. Okay. Is Allied Systems, Inc., is that
15 also a subsidiary of Allied Holdings, Inc.?

16 A. Yes, it is. Basically, the two, Allied
17 Automotives, U.S., Allied Automotive, Canada, is
18 Allied Systems.

19 Q. So Allied Systems, Inc., is the Canada
20 company -- Canadian company?

21 A. Both the Canada and U.S. side together.

22 Q. And Allied Automotive Group, that is the
23 United States?

24 A. It's kind of, yes. I'm not sure whether
25 it's U.S. and Canada. It's kind of Allied Systems,

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8

1 and under Allied Systems you have Allied Automotive
2 Group.

3 Q. On top of it all is Allied Holdings,
4 Inc.?

5 A. Correct.

6 Q. Is that then owned by the Ryder Systems,
7 Inc.?

8 A. No, it's not.

9 Q. Do you -- you were identified in some
10 interrogatories. We asked, Please state who ordered
11 the replacement cable at Moraine, and please give
12 name, address, and telephone number.

13 And we got back an answer that the
14 decision to replace the safety cable in certain units
15 at Marion and Moraine terminals was made by Robert
16 Ferrell, vice president, Allied Automotive Group,
17 Inc., 160 Clermont Avenue, Decatur, Georgia. Is that
18 your current business address?

19 A. That's correct.

20 Q. Did you make that decision to replace
21 the safety cables?

22 A. I did not.

23 Q. Do you know who did?

24 A. I don't know that there was ever a
25 decision that was made to replace them.

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1 Q. How about a Jim Taggart, do you know who
2 that is?

3 A. John Taggart.

4 Q. John Taggart. I'm sorry.

5 A. Yes.

6 Q. Who is he?

7 A. He was an employee of Allied for about
8 three years as director of maintenance.

9 Q. What three years?

10 A. I'm going to say, off of the top of my
11 head -- maybe it was less. Maybe it was two years.
12 '98 -- end of '98 to the middle part of 2000, end of
13 2000. I'm not positive on the dates, but somewhere
14 in that area.

15 Q. Okay.

16 A. Beginning of 2001.

17 Q. Do you know where he is now?

18 A. I don't know where he's at, as far as
19 where he's employed.

20 Q. Do you know his personal address?

21 A. No, I don't. It's in Huntsville,
22 Alabama, I believe, but I don't know the street
23 address.

24 Q. Do you know where he works?

25 A. I do not.

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1 MR. SCHOENI: Sorry, I missed that.

2 When was he employed? Late '98 to 2001?

3 THE WITNESS: He was employed with

4 Allied -- it could have been 2001. I don't

5 have the exact, exactly.

6 Q. And he was director of maintenance for
7 the whole company or division?

8 A. No. With the northeast region. North
9 central, northeast.

10 Q. And northeast and the north central
11 or --

12 A. In part, sometimes, yes.

13 Q. What would the northeast region -- what
14 state would that be?

15 A. It would have been Ohio. I mean, he
16 would have been over that terminal. If you're
17 talking about that T, it would have been New York,
18 New Jersey, come all of the way over -- at one time
19 it went all of the way over as far as Michigan.

20 It's been sort -- those regions were
21 sorted three or four different times because we just
22 tried to marry up our operation counterparts. So
23 that region changed somewhat over the years.

24 Q. Who was your operation counterpart?

25 A. In the northeast region?

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1 Q. Yeah.

2 A. Today?

3 Q. No. Back then.

4 A. Back then. I believe it would have been
5 a gentleman named Joe Trip. I'm not positive.

6 Q. Joe Tread?

7 A. Trip.

8 Q. He was your counterpart?

9 A. No. He was the operations. John
10 Taggart was the main manager. This is his
11 counterpart from the operation side.

12 Q. Back in January and February of 1999,
13 this region would include Ohio, I can take it?

14 A. Yes.

15 Q. And he would have been -- John Taggart
16 would be the director of maintenance for that region,
17 correct?

18 A. That's correct.

19 Q. And so he could make the decision to
20 replace all of the safety cables -- to replace safety
21 cables; is that correct?

22 A. In those terminals, yes.

23 Q. But if I understand you correctly -- we
24 might have got some bad information on this answer to
25 interrogatories. You did not make the decision to

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1 replace the safety cables?

2 A. That's correct.

3 Q. Okay. Do you know who did make the
4 decision?

5 A. I did not know and do not know that that
6 decision was ever made. So, therefore, no, I don't
7 know who made the decision.

8 Q. Do you know if safety cables were
9 ordered to be replaced in any other division?

10 A. Not that I'm aware of.

11 Q. Did you have anything to do with
12 replacement of safety cables back in 1999, 2000, and
13 2001?

14 A. Yes.

15 Q. What did you have to do with --

16 A. The cable that we had that came
17 originally on the trucks was a galvanized cable. We
18 made the decision to go to a stainless steel cable.

19 Q. Okay. When was that?

20 A. It would have been middle of '99 to
21 middle of 2001. I don't know the exact date.

22 Q. And you said "we made the decision."
23 Who was it that made the decision?

24 A. Actually, the final decision was made by
25 myself, but it was as a result of conversations with

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1 a few other folks.

2 Q. Okay. Who did you conference with?

3 A. It would have been my regional director
4 of maintenance, my director of maintenance, and also
5 a shop manager that did some study on cables.

6 Q. Who was the regional director of
7 maintenance that you referred to? Was there one or
8 more than one?

9 A. It would have been John Taggart, Gary
10 Davis, and Mark Kopycienski.

11 Q. You have to spell that one.

12 A. K-o-p-y-c-i-e-n-s-k-i.

13 Q. Where was Gary Davis' region?

14 A. South central.

15 Q. And that would be the south central
16 United States?

17 A. Yes.

18 Q. And how about Mark Kopycienski?

19 A. The western. Western region.

20 Q. Is that everything west of the
21 Mississippi?

22 A. Pretty much, yes.

23 Q. So you talked to those three people,
24 correct?

25 A. Right.

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1 Q. Okay. And then you talked to a shop
2 manager?

3 A. Right.

4 Q. Who -- was that one shop manager or more
5 than one shop manager?

6 A. One shop manager, Phil Watkins.

7 Q. And he was a shop manager for where?

8 A. Cottage Grove, Minnesota.

9 Q. Cottage?

10 A. Cottage Grove.

11 Q. Where is that at?

12 A. Minnesota.

13 Q. I take it it's in Cottage Grove,
14 Minnesota?

15 A. Yes.

16 Q. And you said he did a study?

17 A. Well, he had seen that cables were
18 starting to rust and that and came up with an idea
19 that stainless steel cables, obviously, wouldn't
20 rust. So, therefore, it was a good alternative for
21 us going forward. That was the extent. I guess it
22 wasn't really a big study.

23 Q. So he saw the cables were rusting?

24 A. Right.

25 Q. Where were they rusting?

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1 A. Just the cable part itself was rusting,
2 at the end of the cables where they attached to the
3 tubing on a truck, up by the post.

4 Q. Do you know when -- the trucks are now
5 green. Do you know when they went from yellow to
6 green?

7 A. The trucks? A portion of the trucks are
8 green. We still have a fair amount of the Ryder
9 original equipment that is still yellow. And then
10 the transition started in 1998. Allied purchased
11 that fleet in, I believe, October of '97. And that
12 started to take place at that point.

13 Q. So are they -- all of the new ones green
14 or yellow?

15 A. They are all green.

16 Q. They are all green?

17 A. Yes. Company rigs.

18 Q. Now, what did Mr. Taggart say about the
19 safety cables when you discussed it with him?

20 A. I really don't recall specifically what
21 Mr. John Taggart said.

22 Q. Okay. How about Mr. Davis, do you
23 remember anything he said?

24 A. Specifically, I don't know exactly which
25 one said. I know what the group talked about.

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1 Q. Okay. You don't know what Mark
2 Kopycienski said?

3 A. No, I do not.

4 Q. What did the group talk about?

5 A. We talked about the cable that
6 Phil Watkins come up with would eliminate rust
7 situations. And, therefore, we felt we should put
8 that in as a replacement cable in our parts system
9 and eliminate other cables as a standard inventory
10 item.

11 Q. Now, was there a discussion about them
12 breaking?

13 A. Not that I recall.

14 Q. Why were you concerned with the rust?

15 A. Always concerned about rust from an
16 appearance standpoint, but, obviously, if the cable
17 rusts, it won't last as long. It just starts to
18 deteriorate. And from what Phil had come up with on
19 the stainless steel cable, just, obviously, it would
20 last longer because it did not rust. Stainless steel
21 did not rust. So we thought we would get a longer
22 life out of it.

23 Q. Was there a difference in price?

24 A. I believe there was, yes.

25 Q. And was the stainless steel more

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1 expensive?

2 A. Yes.

3 Q. Now, do you know if any of these cables
4 had broken while -- strike that. Do you know of any
5 cable that broke while people were using the cable --
6 the truck drivers?

7 A. Just the one out of Moraine, and I don't
8 know whether that was prior to the conversation that
9 we just referred to or after.

10 Q. Okay. And -- you mean the one we're
11 here on today?

12 A. That's correct.

13 Q. Do you know of any others out of Moraine
14 or Marion that might have broken?

15 A. No, I do not.

16 Q. Have you ever heard of a Mr. Fay?

17 A. Not until this morning.

18 Q. Okay. You do know one broke on him in
19 August of 2000, correct? Now?

20 A. I know that now, yes.

21 Q. You know that one -- the one we're here
22 on today broke on September 7th of 2000, correct?

23 A. Correct.

24 Q. From what you're saying, there was no
25 schedule to replace them that you knew of --

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1 A. That's correct.

2 Q. -- on the trucks?

3 A. That's correct.

4 Q. Okay. And did they go from the original
5 design to the stainless steel?

6 A. Did we make that transition from our
7 parts inventory and stocking? Yes, we did.

8 Q. Now, do you know if they were ever using
9 a different design, an eyebolt design?

10 A. Back then, I was not aware of it. We do
11 today.

12 Q. Let me show you what's been marked as
13 Plaintiffs' Exhibit Number I in a previous
14 deposition.

15 The one over here to the right is an
16 eyebolt design. Have you ever seen that used before?

17 A. Yes.

18 Q. And when did you know that was being
19 used?

20 A. We use that today. When we manufacture
21 our equipment, that is the cable that we put on it.
22 We also have gone to that design cable recently as a
23 replacement part in lieu of the stainless steel.

24 Q. Okay. But this was not being used as
25 replacement --

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1 A. No, it wasn't, back --

2 Q. -- back in 1999, 2000?

3 A. No, it wasn't. Not that I'm aware of.

4 Q. Okay. The other picture here, this is
5 the one being used as a replacement to the stainless
6 steel with the clear coating, correct?

7 A. That's correct.

8 Q. The original did not have a clear
9 coating, it was painted; is that correct?

10 A. I believe it was a colored casing where
11 you could not see the cable.

12 Q. Okay. Who decided that, to make it a
13 clear colored casing where you could see the cable?

14 A. Actually, that cable was come up with by
15 Phil Watkins. So the purpose of the clear, to see
16 through it and see if the cable was fraying or if
17 there was any rust, which we didn't believe there
18 would be.

19 Q. So Phil Watkins came up with the clear
20 cable, correct?

21 A. That's correct.

22 Q. Clear. Did he decide, also, to make it
23 nylon instead of vinyl?

24 MR. PAULUS: Object.

25 Q. If you know.

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1 MR. WINTER: If you know.

2 A. I don't know.

3 Q. Okay. And Mr. Watkins, did he discuss
4 with you having a space between where the nylon
5 started and where the crimp was that's shown on this
6 picture?

7 A. No, he did not.

8 Q. Okay. That was not discussed?

9 A. No.

10 Q. But it was discussed to have it clear so
11 that it could be seen through to determine if the
12 wires were fraying or rusting?

13 A. No, it wasn't discussed.

14 Q. It wasn't discussed? Why do you think
15 Mr. Watkins came up with that?

16 A. I don't know. I don't know.

17 Q. Have you learned that there was a
18 meeting with Mr. Taggart where he instructed the
19 different terminals within his district to replace
20 all of the cables back in 1999?

21 A. No, I wasn't aware of that.

22 Q. Now, when you ordered the stainless
23 steel cables, where would they come through?

24 A. Our parts replacement would come through
25 GTS, Gill Transportation Services.

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1 Q. Would that be in 1999?

2 A. Close as I can remember, yes.

3 Q. And GTS, Gill Transportation Services,
4 what relationship do they have to Allied?

5 A. They are a service or vendor for us.

6 Q. Allied -- they are not a subsidiary of
7 Allied or Allied Holding?

8 A. They are not.

9 Q. And so would all of the stainless steel
10 cables come through that organization?

11 A. They should have, yes. That's our
12 ordering -- that is the way we order our parts.

13 Q. Okay. Back in 1999, if the cables were
14 being replaced with these eyebolt cables -- we have a
15 picture of -- on trucks in Marion and Moraine --
16 where would they, Marion and Moraine, get those
17 parts? Do they have to go through Allied?

18 A. They're instructed to go through Allied.
19 However, they could purchase a part from the outside.
20 If they purchased through our system, they wouldn't
21 have got those cables.

22 Q. So the terminal managers and the
23 director of maintenance would be instructed, if
24 you're going to replace parts, it goes through our
25 system, correct?

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1 A. Shop managers.

2 Q. Shop managers?

3 A. And maintenance directors, that's
4 correct.

5 Q. Okay. And they shouldn't be going
6 outside to order any type of parts; is that correct?

7 A. That's correct. The only -- unless it's
8 an emergency situation with a truck down and they did
9 not have the part, however -- have the part locally.

10 Q. If they were doing a replacement of all
11 safety cables, that should have gone through whoever
12 your parts supplier was, correct?

13 A. That's correct.

14 Q. Back in 1999, who would have been your
15 parts supplier?

16 A. Gill Transportation Services.

17 Q. How about Delavan?

18 A. Delavan was not.

19 Q. Was not what, in existence at the time?

20 A. No, they were in existence. Our shops
21 and terminals would buy their parts from Gill
22 Transportation Services.

23 Q. Okay. How about Sycamore Parts and
24 Logistics, would they buy parts from them?

25 A. Our contract is with Gill Transportation

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1 Services. Sycamore is Gill, and Sycamore is the same
2 company, as far as I could tell. They are -- I don't
3 know exactly how that works, whether it's a
4 subsidiary, whether it's a branch, or whatever. But
5 it -- we are cotracted with Gill Transportation
6 Services.

7 Q. Okay. Let me show you something that
8 your attorney produced here, just so I understand,
9 okay? And this looks like some type of order. And
10 it's got on the top of it --

11 MR. KOUSTMER: You guys want to look at
12 it? And we have copies of it.

13 Q. -- Delavan Industries, Inc., remit to
14 Buffalo, Sold To Allied Parts Connection, Ship To
15 Allied Auto Group - Marion. And then it's got
16 "eyebolt safety cables."

17 MR. SCHOENI: Off the record.

18 (A recess was taken from 12:38 to
19 12:40.)

20 MR. WINTER: Before we go on, this
21 document Mr. Ferrell had been asked to review,
22 invoice 30685, reportedly from Delavan
23 Industries, has been produced by the Allied
24 defendants and stamped "confidential" pursuant
25 to a protective order. Everybody agreed to it.

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1 The thing we are concerned about is the pricing
2 information.

3 To the extent that the pricing is
4 discussed, we'll insist that that discussion in
5 the deposition transcript be filed under seal,
6 if this document is in the exhibits.

7 MR. KOUSTMER: That's fine. Let's mark
8 it.

9 (Ferrell Exhibit 1 was marked for
10 identification).

11 Q. Okay. We have Ferrell 1 in front of
12 you. Is that something that would come through your
13 company?

14 A. This document?

15 Q. Well, what -- this order, eyebolt safety
16 cables?

17 A. This is an order from. It looks like
18 Allied Parts Connection from Delavan. They sell to
19 other customers other than us. We're the largest of
20 their customers. I don't have any idea where this
21 went to.

22 Q. Okay. It says --

23 A. It says, To Marion.

24 Q. It says, "Ship to Marion"?

25 A. Yeah. So that would say -- it was

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1 shipped to our terminal, that's correct.

2 Q. And is that something that's done
3 through the company or you were talking about maybe
4 outside they did something, but --

5 A. No. This would have been -- I can give
6 you my thought of how this could happen.

7 Q. Okay.

8 A. Okay. APC used to be an Allied-owned
9 company years ago. Prior to '92. I don't know how
10 far it went back. But I know we've had a contract
11 since '92 -- I believe it's April of '92, with GTS --
12 or '97. I don't know exactly what the date is.

13 MR. WINTER: GTS is Gill Transportation
14 Services?

15 THE WITNESS: Gill Transportation
16 Services.

17 A. Everybody has been in this company
18 forever and still refers to it as APC. It's no
19 longer APC. It's no longer owned by Allied. A lot
20 of vendors still call them APC. And Delavan maybe
21 called them APC and maybe billed them as APC.

22 We buy from Gill Transportation
23 Services. APC is no longer in existence as an Allied
24 company. So whether they just stamped it Allied
25 Parts Connection or not, I don't know, but it has

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1 nothing to do with Allied.

2 So if our terminals had ordered the
3 part, it would have been ordered through our computer
4 system, which goes to Gill Transportation Services.
5 Gill Transportation Services would have filled that
6 order. And my assumption of how this happened is
7 Delavan just did APC and sent it to them, billed it
8 to them, and they paid it because everybody knows
9 they used to be Allied Parts Connection. But we
10 order through Gill Transportation Services.

11 Q. Okay. So if I understand, this would
12 have been a normal order through Gill Transportation
13 Services, but they probably just put the wrong
14 company because the company changed names?

15 A. That would be my understanding how this
16 could happen. It is definitely not an Allied
17 company.

18 Q. You mean Allied Parts Connection?

19 A. Allied is not an Allied Automotive
20 Group, Allied Systems, Allied Industries company.

21 Q. When they ship it to Allied Automotive
22 Group, Marion, that's an Allied --

23 A. That is our terminal, that is correct.

24 Q. So when they are shipping eyebolt safety
25 cables to them that are clear-coated, that is through

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1 the normal business of the company?

2 A. Right. That's correct.

3 MR. SCHOENI: Just so I'm clear, Allied
4 Parts is not connected to Allied Holding in any
5 way, shape, or form?

6 THE WITNESS: That's correct. The only
7 thing is, the Gees Mill Business Parkway, that
8 is GTS's address. I'm assuming they just put
9 the wrong name on it.

10 Q. Okay. So up there at the top where --

11 A. Conyers, Georgia. That's GTS's address.

12 Q. Okay.

13 A. And I don't even know if they still call
14 themselves APC or Allied Parts Connection or Sycamore
15 or GTS.

16 Q. They are all in Conyers, Georgia, right?

17 A. They are all in the same building.

18 Q. So on these documents produced by your
19 counsel, the ones that are going to Marion, Ohio,
20 going through the company's normal chain of ordering
21 parts, and it's not some outside, you know, emergency
22 order, this is the normal chain, correct?

23 A. That would be my assumption. The only
24 other way this could have happened that doesn't
25 normally fall through your computer-generated order

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1 is if the terminal called Delavan and ordered it
2 shipped direct but billed to GTS, and it could have
3 happened this way, but that is not normal.

4 Q. Okay.

5 A. That would be the only other way that
6 that could have happened.

7 Q. Okay. We're looking at the answers to
8 the questions directed to Allied Systems and Allied
9 Automotive Group, the plaintiffs' most recent set of
10 interrogatories and production of documents.

11 MR. WINTER: That is about the fifth
12 set.

13 Q. Certificate of service on the 25th day
14 of February 2003 to myself. I'm looking through here
15 with a lot of order forms going into Marion and
16 Moraine, Ohio for safely cables, clear-coated. You
17 want to look?

18 A. Sure.

19 Q. It looks like we have an order coming in
20 on 2/19/99 for 50 of them, correct?

21 A. That's what it looks like.

22 Q. Okay. And then another document for
23 another place. Here's one for Marion. See, the
24 first one, Marion. What was that date, 2/19 --
25 invoice 24812, 2/19/99, 50; we have an invoice 25257,

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1 3/17/99, 50; an invoice 25194 on 3/13 of '99 for 30;
2 10 for one and 20 for another.

3 We have one here, 24696 invoice, 5/29/99,
4 for 12. 25506, Marion, for 2 on 5/21/99. We have
5 one for Moraine for three invoices. 26772 on 6/5/99,
6 Marion, 27331, 7/15 2000 for 6. Moraine, 27832 for
7 84 on 8/19/99 and for 24 on 8/19/99. Moraine on
8 6/29/99 for 3.

9 I'm going to stop there, but we have all
10 of these produced. They have been produced and filed
11 with the court, and all of those -- they are not the
12 emergency you were talking about?

13 A. That's correct.

14 Q. They are orders by the company?

15 A. Emergency would be for one or two, not
16 for 50.

17 Q. Right.

18 A. 50 is a stock order.

19 Q. And it's my understanding that you
20 didn't know anything about Marion or Moraine or the
21 northeast or the central or whatever Mr. Taggart --
22 John Taggart had under his control replacing all of
23 the safety cables?

24 A. Other than to inspect and replace as
25 necessary.

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1 Q. Okay. Who gave that order?

2 A. That was John.

3 Q. How do you know that?

4 A. Just from feedback from the shop
5 manager.

6 Q. What shop manager?

7 A. Bill Weaver.

8 Q. Bill Weaver didn't tell you that
9 Mr. Taggart told him to replace them all?

10 A. He told me that he was instructed to
11 inspect them, and if he found any problems, replace
12 them.

13 Q. What were the problems?

14 A. If they found a problem with a cable
15 being bad.

16 Q. How would a cable be bad?

17 A. A cable would be bad if it was frayed
18 or -- basically, frayed. That's what -- where the
19 cable -- the wires inside the cable were starting to
20 break.

21 Q. How would you know that if there was a
22 nylon or vinyl -- strike that -- if there was a vinyl
23 coating that was painted yellow over it?

24 A. You would look at the end of the cable
25 where it goes into the swedge fitting, and if the

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1 cable was starting to -- the strands of the cable
2 were starting to break, then that would spread out
3 and swell up a little bit.

4 Q. How long were they supposed to last?

5 A. My understanding, the cables on these
6 trucks would last eight to ten years.

7 Q. Were they lasting eight to ten years?

8 A. We still have them running today that
9 were put on originally.

10 Q. The original cable?

11 A. Yes.

12 Q. Where?

13 A. Throughout the fleet.

14 Q. So you have some in Marion and Moraine?

15 A. I don't know that. It's my
16 understanding that -- after talking with Bill, that
17 he felt -- well, I think that maybe there would be.
18 I don't know.

19 Q. Talking with Bill Weaver?

20 A. William Weaver, yes.

21 Q. That he felt what?

22 A. He had told me that he had replaced his
23 cables.

24 Q. Did he say why he did that?

25 A. Just based on inspection of the cables.

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1 Q. Do you know when they were put on the
2 trucks?

3 A. They were put on when the trucks were
4 manufactured.

5 Q. Wasn't that '94, '95 area of time they
6 started putting them on?

7 A. I believe they started putting them on
8 late 1994.

9 Q. So by 1999 there was a problem with the
10 cables rusting?

11 A. Some terminals had a problem with
12 cables.

13 Q. By 1999?

14 A. I believe '99, yes.

15 Q. I mean, that's when your conversation is
16 with the three gentlemen and the guy up from
17 Minnesota, the shop foreman, correct?

18 A. With Phil Watkins?

19 Q. Correct. That was in 1999?

20 A. I don't know exactly the date, '99 or
21 2000. It would have been somewhere in that 12-month
22 period.

23 Q. So by that time there was a problem with
24 the cables rusting?

25 A. Not that we had identified a problem.

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1 We had identified with the stainless steel cable, we
2 knew it would last longer, and so, therefore, we went
3 to the stainless steel cable.

4 Q. Why would you worry about how long they
5 would last?

6 A. Well, that's part of preventive
7 maintenance.

8 Q. What were the cables there for?

9 A. The cables were on the headrack to allow
10 a driver to catch his balance with. Basically, if he
11 was to lose his balance, is my understanding, that he
12 could reach out and grab the cable or lean against
13 the cable. Just fall protection is what --

14 Q. So, in case you started to fall, it
15 would be something to grab so you wouldn't fall?

16 A. Absolutely.

17 Q. So that cable was rusting. Would that
18 mean it might break?

19 A. It would mean that eventually that
20 strands of the cable would break.

21 Q. And if someone put their weight on it,
22 then the cable would break when someone was trying to
23 stop themselves from the fall?

24 A. If enough of the strands had broke. The
25 cable was about -- it was seven times stronger than

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1 what you would need it for the average person to be
2 secure.

3 Q. Do you know who designed that original
4 cable?

5 A. That was done before I came to work with
6 the company. I don't know.

7 Q. You don't know. Do you know how much
8 that cable cost?

9 A. I don't know.

10 Q. How much did the stainless steel cost?

11 A. I don't know.

12 Q. Do you know if the stainless steel
13 design was more or less expensive than this eyebolt
14 design?

15 A. Assumption would be that it would be
16 more expensive.

17 MR. WINTER: I'm going to object to
18 assumption.

19 Q. So you didn't know of any schedule to
20 replace the original cable?

21 A. We did not have a schedule, replacement
22 schedule.

23 Q. Did you have anything you were doing for
24 maintenance for the original cables?

25 A. Sure. Our preventive maintenance

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1 inspection. We inspect the full rig front to back.

2 Q. Were you doing anything such as oiling
3 the cable or washing the cables or anything like
4 that?

5 A. The cables would have been washed when
6 the vehicle was washed. As far as oiling the cables,
7 we would not have done that.

8 Q. Was there any written instructions given
9 to the different terminals of how to care for the
10 cables?

11 A. Not that I'm aware of.

12 Q. You originally said that Mr. Watkins,
13 the fellow -- shop foreman in Minnesota --

14 A. That's correct. He's not with the
15 company any longer, but he was at that time.

16 Q. Do you know where he is now?

17 A. I believe he works for Waste Management.

18 Q. Do you know which Waste Management?

19 A. Same area, Cottage Grove.

20 Q. Cottage Grove. You said he did a study.
21 Then you said, well, it's not really a study. Do you
22 know what he did?

23 A. I don't know exactly what he did other
24 than the fact he made us aware that he was looking at
25 stainless steel cables, and just from our background,

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1 stainless steel don't rust. It eliminates an issue.

2 Q. What do you mean by "issue"?

3 A. Anything that don't rust requires less
4 maintenance.

5 Q. And so after he brought that up, was
6 some design -- or some team looked at it to design a
7 new cable, or did you just substitute the stainless
8 steel for the galvanized steel?

9 A. We substituted the cable.

10 Q. Did you change the diameter any?

11 A. No. It was the same cable.

12 Q. So the main thing that was done then
13 from the original design was just to put in stainless
14 steel and make the coating clear?

15 A. We -- the original design change was to
16 go from galvanized to stainless steel. The casing, I
17 think, was just something that happened. I mean, it
18 wasn't by design, let's go change the casing.

19 Q. Did Mr. Watkins mention the casing?

20 A. Not that I recall.

21 Q. So after this conversation took place
22 with the three regional directors of maintenance and
23 Mr. Watkins, the new part to replace them was the
24 stainless steel, is what you're saying?

25 A. That's correct.

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1 Q. Okay. And so any ordering that was done
2 would be done just for replacement purposes?

3 A. That's correct. That part was stocked
4 versus the other part.

5 Q. And you stopped stocking the galvanized
6 one?

7 A. That's correct.

8 MR. KOUSTMER: Okay. Why don't we mark
9 that?

10 (Ferrell Exhibits 2 - 4 were marked for
11 identification)

12 Q. Okay. You're looking at Number 2, which
13 has been produced prior and testified about. It's
14 Mike Palladino's report concerning this accident,
15 which he says that, "There's been an ongoing problem
16 with the cables breaking." Were you aware of that,
17 sir?

18 A. No, I wasn't.

19 Q. And would that be something you should
20 be aware of?

21 A. If it was an ongoing problem, I would
22 have been aware of. Who is Mike Palladino?

23 Q. He would be the safety manager, I think,
24 for this terminal at -- where this occurred.

25 A. Okay.

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1 Q. This is his report. Do you know what
2 happened to the cable in question here?

3 A. I do not.

4 Q. If a cable broke, would that be
5 something that was supposed to be kept?

6 A. If a cable -- just a cable broke, no one
7 got hurt on it?

8 Q. Yeah.

9 A. No. It would be disposed of.

10 Q. If someone got hurt?

11 A. I don't know what would happen with that
12 cable back then. We do things differently now.

13 Q. What do you do now?

14 A. Today, when a cable or a chain broke --
15 breaks, and we have an injury, or a piece of
16 equipment breaks and we have an injury, if it's a
17 part that we can get, we have it sent into our
18 office, and we tag it, we inventory it to the
19 terminal, and we have it tested and we store it.

20 Q. Okay. When did that start?

21 A. It started last year.

22 Q. And at the time that this occurred in
23 2000, do you know of any written procedure in the
24 company to keep that cable?

25 A. I am not aware of any.

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1 Q. Okay. Do you know Mr. Palladino?

2 A. No, I do not.

3 Q. As part of your employment, were you

4 sent safety committee meeting minutes?

5 A. No.

6 Q. Were you aware of safety --

7 A. Excuse me. I did get some.

8 Q. Were they sent to the company?

9 A. Not that I'm aware of. I am not aware

10 of any.

11 Q. So they wouldn't be sent to Allied?

12 A. Not that I'm aware of. They could have

13 been sent to the safety department, but I didn't get

14 them.

15 Q. Was the safety department under you?

16 A. No, it was not.

17 Q. So that wouldn't be part of your duties

18 as vice president?

19 A. No, it is not.

20 Q. Excuse me?

21 A. It is not. Safety department is not.

22 Q. Who would that be?

23 A. I'm trying to think. I don't know.

24 Q. You don't know who that was in 1999?

25 A. No, I don't. I'm trying to think. The

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1 safety -- it would -- a person named Bob Crimn was in
2 our safety department. We had, also, a person named
3 Maurice Kash, who passed away. And I think that
4 happened in '99 or so. I'm not quite sure. But
5 after that, it should have been Bob Crimn.

6 Q. Was there ever -- strike that. Do you
7 know if there was ever any chain clothesline that
8 was supposed to be used on that headramp?

9 A. Chain?

10 Q. Yeah.

11 A. I'm not aware of it.

12 Q. Was there ever a discussion on that?

13 A. Not that I was part of.

14 Q. And you're not aware of any
15 discussion --

16 A. Of no chain, no.

17 Q. Was Marion or Moraine ever going to be a
18 test site for putting on these new safety cables?

19 A. Not that I'm aware of.

20 Q. What would they mean by, Retrofited
21 clothesline were not being retrofitted onto trucks,
22 we will continue to replace them as required.

23 A. Retrofitted? What they would have meant
24 by that would be that the Delavan equipment, starting
25 in late '94, would have these cables on them. There

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1 was probably only about five or six hundred trucks in
2 our fleet at that time.

3 It was roughly 4800 rigs. To go and
4 retrofit that back on the remainder of the Allied
5 equipment -- I'm assuming this -- that they would be
6 referring to going and installing them on trucks that
7 weren't originally manufactured with that system on
8 it.

9 Q. So if the truck didn't have any type of
10 safety cable, it was just left that way?

11 A. That is correct.

12 Q. Now, how many trucks do you think had
13 the old style '94, '95 safety cables until 1999 when
14 you had this discussion about using stainless steel?

15 A. Somewhere between five to six hundred
16 trucks.

17 Q. Okay. So we're dealing with, to replace
18 them all, would have been about 2,000 cables?

19 A. Approximately.

20 Q. Was there a problem getting cables to
21 the different terminals, ordering them?

22 A. Not that I'm aware of. Not that I'm
23 aware of.

24 Q. Okay. Just so I understand, there
25 wasn't any supply problem? I mean, people can

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1 manufacture stainless steel cables. You didn't have
2 anybody saying, we can't get you that many cables?

3 A. I don't work directly with the parts
4 suppliers. We order through GTS by means of a
5 computer system, and they order and fill the orders.
6 And occasionally we have backorders, but I don't get
7 brought into that loop unless there is a real
8 problem.

9 Q. So if there was a real -- strike that. So
10 you're unaware of any problem with supply of the
11 cables?

12 A. That's correct.

13 Q. The stainless steel cables, correct?

14 A. That's correct.

15 Q. You don't know any reason why they
16 couldn't have been purchased or --

17 A. Stainless steel, when we first
18 started -- any program where you have a lot of trucks
19 in your fleet, they may have not have been up to
20 supply, when you go from one cable to the next. That
21 would have been the only thing that could have been.
22 However, I'm not aware of that.

23 But, I mean, when you change any item
24 over -- we change to a different tire, and we have --
25 automatically have our -- have a tremendous need for

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1 it, sometimes the suppliers can't keep up at the very
2 beginning until they ramp-up to handle our volume.
3 That would have been the only thing that could have
4 happened, and I'm not aware of that.

5 Q. But there's plenty -- from your
6 experience, there is plenty of companies that make
7 stainless steel cable?

8 A. I don't know that. I've never -- I
9 don't know how many make cables. We order from parts
10 suppliers, and they go out and search for the cables.

11 Q. Okay. And there's just five or six
12 hundred trucks in the whole fleet had these cables,
13 correct?

14 A. That would be pretty accurate, yes.

15 Q. And you were not retrofitting the whole
16 fleet?

17 A. At that time, we were not.

18 Q. Let me show you -- we're at Plaintiffs'
19 Exhibit Number 3. This looks like an order form
20 through Sycamore Parts and Logistics, Inc., again.
21 And that is Gees Mill Business Parkway, correct?

22 A. Correct.

23 Q. And that would have been -- in the
24 normal course of the Allied Company, that went to
25 Moraine, correct?

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1 A. That's what it says, yes.
2 (The following testimony was deemed
3 confidential and is contained under
4 separate cover.)
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1 (The preceding testimony was deemed
2 confidential and is contained under
3 separate cover.)

4 Q. Do you know of any memo from Delavan or
5 any of the other Allies saying that the cable needs
6 to be replaced? Have you ever seen such a memo?

7 A. Never.

8 Q. How many conversations did you -- well,
9 strike that. When you had this conversation with the
10 three terminal -- district people, was it on a
11 conference call or did you just talk to them
12 individually or what do you remember?

13 A. I don't remember a lot about it, and I
14 don't remember the setting. But I would think it was
15 probably -- it could have been a combination with a
16 couple and one on the phone, because John Taggart
17 lived out of Michigan at the time. Just -- I don't
18 recall all of the details of it.

19 Q. You would not be -- in your position,
20 you would not be in the loop to get reports of broken
21 cables and accidents? Is that my understanding?

22 A. At the time, that's correct.

23 Q. Okay. So you wouldn't get a report of
24 Mr. Ferguson's accident, correct?

25 A. That's correct.

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1 Q. Or anyone else's; is that correct?

2 A. That's correct.

3 Q. Now, you said something about you're
4 back to using the eyebolt now?

5 A. We use the eyebolt now. I don't know
6 that we ever used it in the past.

7 Q. When did that start?

8 A. It started with the refurbishment of our
9 equipment. We refurbish our equipment about every
10 seven to eight years, and that is certainly something
11 we look at. We went to that new cable.

12 Q. When you say "new cable," is that the
13 stainless steel cable?

14 A. No, the eyebolt-type cable.

15 Q. Okay.

16 A. And I believe this started in the past
17 year, because that's what Delavan uses, and they do
18 the bulk of our refurbishment.

19 Q. But that would have been starting in the
20 last year?

21 A. That's correct. Let's go back. I'm
22 sorry. Maybe the year before last. Because Delavan
23 has done it, and it started when we started putting
24 these on our headracks during the remanufacturing
25 process.

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1 It was one of the things that we did to
2 make sure we were doing everything we could for the
3 safety of our drivers. We started putting that on
4 trucks that did not have them, and that was the cable
5 that was used. And we also replace every cable as it
6 comes in for refurbishment with the new cable.

7 Q. And the new cable is the eyebolt?

8 A. It would have an eyebolt at the end.

9 Yes, it is an eyebolt.

10 Q. Is that also stainless steel or
11 galvanized steel?

12 A. It's galvanized steel.

13 Q. Why did you go from the stainless steel
14 to the galvanized steel?

15 A. Because with the eyebolt, there's no
16 twisting of the cable, and the twisting of the cable
17 with the swedging is what was causing the galvanizing
18 to flake off. So with the eyebolt -- the eyebolt
19 pivots in the eyebolt of the cable, and it's attached
20 in the upright. And, therefore, the cable never
21 bends back and forth like it does on a swedged cable.

22 Q. Okay.

23 (A recess was taken from 1:17 to 1:20.)

24 Q. I will show you what was previously
25 marked at Plaintiffs' Exhibit G. And that's what

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1 you're talking about, the eyebolt, correct, in a
2 previous deposition?

3 A. It's hard to make it out exactly, but
4 that's what the eyebolt-type cable looks like, yes.

5 Q. And you're saying that that's the reason
6 you're back to an eyebolt is because it doesn't twist
7 or -- what were you saying when we took a break?

8 A. The swedge cable, the cable is
9 hard-fixed, crimped into the end of the swedged end.
10 So, therefore, if the cable sways, this bends right
11 here. It flexes.

12 Q. At the -- right where the swedges were,
13 the swedging meets the cable, right?

14 A. That's correct. But -- actually, the
15 cable goes into the swedge. But -- actually, where
16 the cable is, where you can see the cable, yes. And,
17 therefore, it causes the galvanizing to flake or what
18 have you, and that's where rust starts.

19 This cable here, we use this cable
20 because Delavan was putting that on all of their new
21 manufactured equipment and on everything that they do
22 for us in a remanufacturing process. So I made it
23 standard to put it in on everything on replacement
24 parts.

25 And the stainless steel was no longer an

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1 issue because of the cable being able to pivot within
2 the two eyebolts and not bend back and forth. It
3 just pivoted.

4 Q. And this was done after you originally
5 started doing stainless steel?

6 A. Yes.

7 Q. And so that would be, you said, what, in
8 the last year and a half, two years?

9 A. Two years. I'm going to say a year and
10 a half, two years. We have been remanufacturing
11 trucks ever since I have been with the company and
12 long before that. However, Delavan does the bulk of
13 everything we do, and I look to them when we have --
14 when we put things on our trucks. We say, okay, we
15 want the fall protection on them. They come up with
16 the design, and I use their design.

17 Q. So this would have been starting in
18 about 2001?

19 A. Yes --

20 Q. Okay.

21 A. -- where we retrofitted them on all of
22 the trucks.

23 Q. So all the --

24 A. The trucks go through the
25 remanufacturing process.

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1 Q. Okay. If they have a stainless steel on
2 them, is the stainless steel taken off and the
3 eyebolt is put on?

4 A. That's correct. But that may have
5 not -- that didn't happen until several months back
6 or a couple of months ago when we decided to go to
7 the new style cable, meaning the eyebolt, as a
8 replacement part. At that time, we said, take them
9 all off, replace them all.

10 Q. When was that?

11 A. A few months back. Three, four months
12 ago.

13 Q. So you replaced them. Is this the whole
14 fleet or just as they come in?

15 A. Through the remanufacturing. In the
16 remanufacturing process.

17 Q. And that's done, you said, by Delavan?

18 A. Delavan Industries, yes.

19 Q. And that's in Buffalo, New York?

20 A. West Seneca, New York. Buffalo.

21 Q. And they are still doing that?

22 A. Correct.

23 Q. And they do that for Allied?

24 A. They do.

25 Q. Now, if you have a truck, they have the

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1 replacement cable that was stainless steel, such as
2 in Exhibit 1 with the swedge, and it goes through to
3 be refurbished, it would come out with an eyebolt?

4 A. That's correct.

5 Q. And that's because at the swedge there's
6 not a twist; when you have the eyebolt, it goes with
7 the cable?

8 A. That's the reason we don't go with
9 stainless steel. The reason we went to the eyebolt
10 is because that's what Delavan uses.

11 Q. And is it also coming out with a clear
12 plastic coating?

13 A. You know, I -- some of them were coming
14 out with the yellow casing on them, and I told them
15 to stop it. And I believe the new casing is clear or
16 either gray. And I haven't climbed up on the
17 headramp to look at them. It's either gray or
18 clear. There was no instruction to put a clear
19 coating on it. The instruction was to get the yellow
20 cables off my trucks.

21 Q. They come clear, though, correct, when
22 you order them, the cables?

23 A. I don't know. They are either clear or
24 gray.

25 Q. The clear you can see through to make

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1 sure there's no rust, correct?

2 A. The clear -- I would think you can see
3 through a clear cable.

4 MR. SCHOENI: Just so something is
5 clear, I think Tom referred to a plastic
6 coating. Are any plastic?

7 THE WITNESS: I don't know what the
8 casing is made of. It has a casing, and I
9 couldn't tell you what it's made of.

10 Q. You don't know if it's vinyl or nylon?

11 A. I don't know.

12 Q. Do you know if the stainless steel is
13 covered with vinyl or nylon?

14 A. I do not know.

15 Q. I will show you a better picture of
16 Exhibit B, previously marked in a deposition. Is
17 this the eyebolt design?

18 A. Yes. That's an eyebolt design.

19 Q. Okay. What is your educational
20 background?

21 A. What do you mean? From --

22 Q. Did you go to high school?

23 A. Absolutely, yes.

24 Q. You graduated from high school?

25 A. Yes.

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1 Q. Where?

2 A. Brandon High School, Brandon, Florida;
3 International Technical Institute in Tampa, Florida.

4 Q. What type of degree did you get from
5 there?

6 A. Just a two-year degree.

7 Q. In what?

8 A. Diesel technology.

9 Q. Diesel engines?

10 A. Diesel fleet maintenance repair.

11 Q. Any engineering degrees?

12 A. No.

13 Q. Any further education beyond the two
14 years?

15 A. Other than many, many courses and
16 classes with United Parcel Service.

17 Q. Okay. And that was in the maintenance
18 of UPS fleets?

19 A. UPS truck fleet.

20 Q. You hadn't dealt with car haulers until
21 you came on this job, correct?

22 A. That's correct.

23 Q. This -- on this Exhibit V here, this gap
24 between the vinyl coating -- or nylon coating and --
25 what would you call that?

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1 A. Swedge fitting.

2 Q. Swedge fitting. There's a quarter-inch
3 gap about where the wire is. Did you order to have
4 that quarter-inch gap?

5 A. No, I did not.

6 Q. Do you know anything about whether or
7 not that was on the original design?

8 A. I don't know whether it was on the
9 original design. I don't design them. I go to the
10 companies and tell them what I need, and they have
11 their engineering staff design them.

12 Q. So when you went to get the stainless
13 steel ones, did you go to a company to have them
14 designed?

15 A. Phil Watkins did that for us.

16 Q. Who did Phil go to?

17 A. Phil went to -- and I don't even know
18 the name of the supplier. I don't remember the
19 company that he was purchasing through.

20 Q. Was Phil purchasing for the whole
21 company?

22 A. No, he -- he actually looked at the
23 cable, replaced the cable from a galvanized cable to
24 a stainless steel cable, and then we had our parts
25 warehouse start buying the stainless steel cable.

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1 Q. But you don't know who he talked to
2 about the design?

3 A. No, I don't.

4 Q. And you don't know anything about this
5 gap?

6 A. I do not.

7 Q. Do you know if the gap was on the
8 stainless steel one?

9 A. I do not.

10 Q. It looks like it is in I. Am I correct?

11 A. It looks like it's cut back, the casing
12 is.

13 Q. Okay. One minute. Back in 1999, was --
14 whose territory was Missouri, of those three
15 gentlemen you named?

16 A. Mark Kopycienski.

17 Q. And Georgia would be?

18 A. Georgia would have been Joe Fenwin
19 (phonetic). I'm sorry, I didn't give you his name
20 earlier.

21 Q. Did you give us his name to start with?

22 A. I didn't give you his name to start
23 with.

24 Q. So he would be the counterpart of
25 John Taggart in the southern region?

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1 A. That's correct.

2 Q. And Kansas would be?

3 A. It would have been Mark Kopycienski,
4 also, at that time.

5 Q. Would Mr. Taggart have Wisconsin?

6 A. I believe he would. It's just because
7 we have rearranged those regions several different
8 times. And at that time, I'm not quite sure, but I
9 believe they would have.

10 Q. You think he was the -- kind of like
11 Midwest, New England area?

12 A. At any given time. And I would have to
13 go back and retrace the different layouts of the
14 regions that we had because we did move them several
15 times.

16 Q. And Massachusetts would be in his area?

17 MR. WINTER: Objection to the form. Who
18 is "his"?

19 Q. I'm sorry. Mr. Taggart.

20 A. Yes. It would have been.

21 Q. Michigan, Ohio, correct --

22 A. That's correct.

23 Q. -- John Taggart?

24 MR. KOUSTMER: That's all I have, sir.

25 Thank you.

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1 CROSS-EXAMINATION

2 BY MR. SCHOENI:

3 Q. Mr. Ferrell, were you familiar with the
4 cabling system that was in use at the time of
5 Mr. Ferguson's fall?

6 A. Yes.

7 Q. Who designed that cabling system?

8 A. I do not know. I mean, trucks were
9 purchased from Delavan Industries.

10 Q. Do you know who manufactured that
11 cabling system?

12 A. My understanding, Hanes supplied it.

13 Q. And do you know who supplied that
14 cabling system? Do you understand the distinction
15 between manufacturing and supplying?

16 A. Sure. I guess what I'm going to have to
17 say is, firsthand, I'm not aware of who designed it
18 or who supplied it. It was before I came to work for
19 the company.

20 Q. Has anyone told you who designed it or
21 supplied it?

22 MR. PAULUS: Object.

23 A. Yes. It's my understanding that it was
24 designed by Hanes Supply.

25 Q. And how is that your understanding? How

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1 did that come to be your understanding?

2 A. Mike Bevilacqua and I had a conversation
3 about fall restraints and cables.

4 Q. What was the gentleman's name?

5 A. Mike Bevilacqua.

6 Q. And Mike told you that the cabling
7 system that was being used at the time of

8 Mr. Ferguson's fall was supplied by Hanes Supply?

9 A. Not specifically. We were talking about
10 replacement cable on my headrack. It wasn't about
11 this particular cable.

12 Q. Okay. And what did Mike tell you?

13 A. That we went to the new style cable
14 because of the fact that, you know, we use the
15 eyebolt, and it gives us a better flexibility from an
16 adjustment on each end of the cable when we are
17 putting these on, retrofitting them onto the tractor.

18 In other words, the swedge-type cable was
19 limited in the amount of adjustments, and we use the
20 eyebolt cable so we have more adjustment. In case we
21 put these uprights on within an inch or so of where
22 they really need to be, we have more adjustment.

23 Q. And you have maybe three or four inches
24 of all thread on the end of the eyebolt; is that
25 right?

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1 A. That's correct.

2 Q. So if you had to take up an inch or two,
3 you just crank it down?

4 A. Correct.

5 Q. And it was during the course of this
6 conversation with Mike that you discovered that Hanes
7 Supply had come up with that solution to the cabling
8 problem?

9 MR. PAULUS: Object to the form.

10 A. I don't know if they came up with the
11 solution, but that's who supplies them with the
12 cable, from my understanding.

13 Q. And when you say, "that's who supplies
14 them with the cable," who do you mean? That's who
15 supplies Delavan with the cable?

16 A. Correct.

17 MR. SCHOENI: That's all I have.

18 Thanks.

19 CROSS-EXAMINATION

20 BY MR. PAULUS:

21 Q. I'm Craig Paulus. I represent Hanes
22 Supply. When did you have that conversation with
23 Mike Bevilacqua?

24 A. About two or three months ago.

25 Q. Okay. And he works for Delavan?

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1 A. Yes.

2 Q. He works for the new Delavan in West
3 Seneca, New York, right?

4 A. Right.

5 Q. That's the same company that refurbishes
6 your equipment?

7 A. That's correct.

8 Q. "Remanufacturing" was the term you used.

9 A. Remanufactures.

10 Q. How do you know when to remanufacture a
11 truck?

12 A. There's different indicators based on
13 where the truck runs, area of the country, what
14 product it's hauling.

15 Q. So if it's -- how about one in Ohio,
16 just how long would a truck like that -- how many
17 miles would it have on it before it was sent to be
18 remanufactured?

19 A. The remanufacturing decision is not
20 based on miles. It's based on the structure of the
21 trailer and headrack and what are the impacts.

22 Here's the things that we make our
23 decision on: Structurally and hydraulic, and there's
24 an appearance factor in there. That is certainly
25 important to your customers, but that's not what

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1 drives the remanufacturing process.

2 The structurally -- the soundness of the
3 rig from a structural standpoint, and also, from the
4 hydraulic systems, how reliable they are, is what
5 drives the remanufacturing process or our priority of
6 our fleet into remanufacture.

7 Q. Are any of your vendors or Allied
8 Automotive a participant in the ISO 2000-2001
9 program?

10 A. Yes.

11 Q. Is that limited to your willingness to
12 use a safety -- supplier of safety cable?

13 A. A safety cable is not current ISO, so
14 it's not classified as a critical part. The way the
15 system was set up originally, it was set up on chains
16 and tie-down bars. That was done before I came with
17 the company. So that particular part was not part of
18 the ISO standards.

19 Q. And the chains you're referring to?

20 A. Tie-down chains, to tie the vehicles
21 onto the rig.

22 Q. Okay. Are you aware of what the OSHA
23 standard is for fall and arrest equipment?

24 A. Our trucks not -- they don't fall under
25 OSHA. They fall under DOT, so I don't know.

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1 Q. What's "DOT" stand for?

2 A. Department of Transportation.

3 Q. What is their standard for fall and
4 arrest equipment?

5 A. I'm not aware they have one.

6 Q. Earlier you said it was seven times
7 stronger -- the safety cable was seven times
8 stronger, and I believe you were speaking of the
9 original design. Do you remember that?

10 A. Right, I remember.

11 Q. Were you talking about the original
12 design?

13 A. That's correct.

14 Q. How do you know it's seven times
15 stronger?

16 A. Well, it's my understanding that the
17 cables were designed to catch someone if they were
18 falling. And so, therefore, you figure a driver
19 that's approximately three or four hundred pounds, on
20 the high side, which would be, obviously, a big
21 person, with a size force of a fall of maybe a
22 thousand pounds of cable. The cable is 7,000-pound
23 cable, so that's where I came up with that number.

24 Q. Are you aware -- strike that. In
25 addition, aside from Mike Bevilacqua, have you talked

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1 to anybody -- has anybody else indicated to you that
2 Hanes Supply had some involvement in this cable?

3 A. No.

4 Q. Would there be records -- I guess I'm
5 asking for you to explain how the recordkeeping would
6 work. When a terminal like Moraine was ordering
7 parts, they would order it from or requisition it
8 from the Conyers, Georgia -- one of the Conyers,
9 Georgia, Gill Transportation or Allied Parts
10 Connection, or Sycamore; is that right?

11 A. Actually, the way our parts ordering
12 system works, we're on a computerized system. We
13 have two methods of ordering parts. Meaning, if
14 parts are used in our system and they are an
15 inventory item, we either scan them into the computer
16 or key them into the computer.

17 When we fall below a minimum order --
18 our minimum or max is set in the computer on parts
19 inventory -- there is a load that automatically drops
20 a purchase order to Gill Transportation Services, and
21 they will fill the order, ship the parts, and send us
22 a shipper ticket in our computer.

23 Q. Okay.

24 A. When the parts are delivered, our shop
25 manager goes out with a packing slip and says, I have

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1 three of these, two of these, and accepts the
2 purchase order.

3 The other way is, if the part is not a
4 standard inventory item, meaning we don't have an ATA
5 number or part number, we pick up the phone and call
6 them and order it, or we go locally and purchase it
7 if it's an emergency situation and we need to get the
8 truck out. Then it's billed to GTS, and they bill
9 us.

10 Q. Would there be any order of -- you know,
11 if a terminal ordered a part or obtained a part from
12 a local vendor, would that be in the computer,
13 necessarily?

14 A. That would not be keyed in the computer.
15 What would happen, an invoice would be sent to Gill
16 Transportation, and they may have records. They, in
17 turn, would bill us on an invoice, such as you see
18 some of these with "APC" on them, miscellaneous, but
19 a hard copy.

20 Q. And you're indicating Exhibit -- Ferrell
21 1. Okay. Earlier you testified something about all
22 parts going to Moraine. If there were cables going
23 to Moraine, they would have come through Gill at some
24 point; is that correct?

25 A. Let me explain what I mean.

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1 Q. I ask this question because I was
2 confused about whether you were talking about eyebolt
3 cable or other cables, and I may have misunderstood
4 you.

5 But I thought you said if there were
6 eyebolt cables coming to Moraine in 1999, they
7 wouldn't have come from Hanes.

8 A. When I say "Come from Gill," I mean the
9 invoicing. I don't necessary mean the part was
10 shipped out of their warehouse. A lot of time they
11 will ship direct from a supplier.

12 Q. Did Mr. Watkins from Minnesota that was
13 involved in the decision to change to stainless steel
14 cables, did he ever share any written documents with
15 you, or statistics?

16 Do you know if he wrote anything down,
17 made any record of his study, for lack of a better
18 word?

19 MR. WINTER: Object to the form.

20 A. Not that I'm aware of.

21 Q. He never sent you anything relating to
22 that?

23 A. Not that I can recall.

24 MR. PAULUS: And I guess that's it.

25 Further CROSS-EXAMINATION

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1 BY MR. KOUSTMER:

2 Q. I just have a couple of follow-up
3 questions. Do you remember the exact conversation
4 you had with Michael Bevilacqua?

5 A. Bevilacqua.

6 Q. I call him Michael B.

7 A. Everyone calls him Michael B. Exact to
8 the fact that, Mike -- I want to make sure. We had
9 several conversations over time, okay, about fall
10 restraints.

11 Q. And these have all occurred within the
12 last year?

13 A. No. It would go back a couple of
14 years. Mike, I want all restraints on everything
15 that comes in for the remanufacturing process,
16 whether it came with it or not.

17 The next conversation was, Okay, I want
18 to replace them on every truck that comes in.
19 Whether they have a new stainless steel cable, an
20 eyebolt cable, I don't care what it is, when it comes
21 in the door, replace it.

22 And the next one to that was -- most
23 recent was to put the eyebolt-type cable on it.
24 Because when I was in the terminal last time, I
25 noticed that we had the eyebolt-type cable on it, and

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1 I wanted to make sure that my shops -- I do this with
2 everything -- I want to be consistent. I want one
3 stock item. I want one thing going on our trucks, if
4 I can, if it makes sense to go to the eyebolt cable.
5 So we stock one cable. And then we do the same thing
6 in the remanufacturing process. The new process, if
7 we buy new equipment from Delavan, and the
8 replacement process is consistent. So that is the
9 conversation that I had with him.

10 Q. Okay. And those conversations occurred
11 within the last year, you think?

12 A. They could go back two years from the
13 start of this.

14 Q. But after Mr. Ferguson's accident on
15 September 7th of 2000?

16 A. I would say it's after. We were
17 remanufacturing equipment with them prior to that.
18 However, I don't believe that we were doing the fall
19 restraint cables on the trucks at that time.

20 Q. So at that time, if a truck came in for
21 remanufacturing and it would have had the cable, the
22 cable would stay. If it didn't have the cable, you
23 wouldn't put cables on it?

24 A. That is correct.

25 Q. Because it would come out the way it

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1 went in?

2 A. That's correct.

3 Q. And what did Mike B. say exactly about
4 Hanes Supply, if you remember?

5 A. I just -- I had asked him, did he make
6 the cable internally, and he said they had made --
7 they outsourced the cable, because Mike does a lot of
8 that on different parts and pieces of the equipment,
9 unlike some of his competitors.

10 Q. So you asked if Delavan, when they were
11 retrofitting the truck, if they were making the cable
12 themselves, and he said no?

13 A. Right. I wanted to know if he was in
14 control of the supply, and if he could fill my
15 order. If I turned my replacement parts business
16 over to him, could he handle it.

17 Q. And could he?

18 A. He told me he could, yes.

19 Q. To replace all of the cables?

20 A. As replacement parts, as anything, just
21 as we did with the cylinders. There may be a ramp-up
22 period, but he felt he could handle it.

23 Q. The ramp-up period wouldn't be longer
24 than a year, would it?

25 A. No, absolutely.

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1 Q. How long is the ramp-up period that you
2 were referring to prior?

3 A. I don't know that we had to have a
4 ramp-up period, but it would never go for a year.

5 Q. Okay. It would be sooner than that,
6 right?

7 A. Sure.

8 Q. Okay. Mr. Paulus asked you about when
9 you send the trucks up there to remanufacture them,
10 and he talked about Ohio, and you said, it's
11 structural and hydraulics. Do you have an idea how
12 long one of these trucks last when -- these trailers
13 last in Ohio before you have to remanufacture it?

14 A. Specifically out of Ohio, I could tell
15 you that we've been in that process for the last
16 couple of years. The trucks were probably in the
17 neighborhood of seven to eight years old, so -- when
18 we do take them in. They haul medium-level products
19 out of there, so it's not -- the products that we
20 haul is not breaking the equipment like it does when
21 you haul Hummers, okay, if you have one that weighs
22 5,000 pounds, 4,000 pounds versus 6800 pounds.

23 So the wear and tear on the equipment is
24 different in every terminal, and it's different by
25 area of the country because of the salt on the roads

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1 and different things like that.

2 Typically, in our company, the equipment
3 will hit anywhere from year seven on, the earliest,
4 as late to year ten. Ten, eleven.

5 Q. And they get -- when you say seven is
6 the earliest that you remanufacture one of these
7 trailers and ten is the latest, so they last between
8 a period of seven to ten years, depending on
9 conditions?

10 A. Right. There are exceptions where
11 occasionally I will bring one in that may be five
12 years old. Very, very rare. I did that this past
13 year. But for the most part, they fall in that
14 window.

15 Q. Okay.

16 A. And that was not done out of Moraine.

17 Q. So if someone is designing a safety
18 cable to go on a truck, a new truck, they should plan
19 on that safety cable lasting at least seven to ten
20 years, or ten years, correct?

21 MR. PAULUS: Object to the form.

22 A. I don't -- from a fleet, that's
23 preferable. Obviously, that's the way it's handled
24 at the remanufacture time. But that's not always the
25 way things happen.

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1 Q. And, I'm sorry, I missed -- the ISO
2 safety cable, I kind of missed what you were saying
3 about that. Can you repeat?

4 A. The safety cable is not part of any
5 critical part as it relates to ISO. When Allied did
6 the ISO certification, the safety cable was not part
7 of it.

8 Q. Okay. And when Mr. Paulus asked you
9 about the eyebolts, they are ordered through one of
10 the companies in Conyers?

11 A. Ordered through GTS. We only order
12 through GTS.

13 Q. But GTS might ship directly to the
14 terminal?

15 A. That's correct.

16 Q. But it would be -- it would have been
17 ordered through the company, the cables?

18 A. It would have been ordered through our
19 computer system straight to GTS. They may source it
20 off their own shelf or order directly from the
21 supplier to ship directly to our terminal.

22 Q. Okay. But the ones we went through
23 here, and we didn't get through them all in these
24 answers to interrogatories dated February 25th, these
25 are coming through the company Allied, GTS, or

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1 someone in Conyers?

2 A. This is a Delavan invoice to GTS. I
3 can't tell how GTS ordered it, whether it was a
4 result of the computer order or whether it was a
5 result of the -- a terminal , saying, hey, I'm out of
6 this.

7 This is an invoice from GTS, so I can't
8 tell from this how they received an order from
9 Allied.

10 Q. But the order did come from Allied?

11 A. That's who they supply 90 percent of
12 their parts to. So I'm assuming that's correct, yes.

13 Q. And was shipped to the terminal?

14 A. That's correct.

15 MR. KOUSTMER: Okay. That's all I
16 have, sir. Thanks.

17 FURTHER CROSS-EXAMINATION

18 BY MR. SCHOENI:

19 Q. Do you have any idea whatever happened
20 to the cable involving Mr. Ferguson's accident?

21 A. I do not.

22 EXAMINATION

23 BY MR. WINTER:

24 Q. Just a couple of follow-up questions with
25 respect to the documents that you discussed with

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1 respect to Delavan. Would it be fair to say
2 that Delavan would be a supplier of parts
3 to GTS?

4 A. That's correct.

5 Q. And in this instance, Allied would have
6 ordered the parts through GTS?

7 A. We would order from GTS.

8 Q. Then GTS would do whatever it takes to
9 get that part?

10 A. That's correct.

11 Q. And perhaps from Delavan?

12 A. That's correct.

13 Q. Have you heard of Mr. Thomas Fay prior
14 to today?

15 A. Thomas Fay is the other injury?

16 Q. Alleged other injury.

17 A. Not before this morning.

18 Q. Prior to the commencement of the lawsuit
19 that we're here about today involving Mr. Ferguson
20 and the alleged fall by Mr. Ferguson from an Allied
21 truck?

22 A. No, I have not heard of others.

23 Q. Have you heard of any falls causing
24 injury to drivers as a result of an allegedly
25 defective cable?

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1 A. No, I have not.

2 Q. I understood your testimony earlier,
3 sir, that you had not -- you and the maintenance
4 department had not given written instructions to the
5 terminal with respect to maintaining the cable
6 allegedly supplied by Hanes Supply?

7 A. That's correct.

8 Q. Did I understand you correctly?

9 A. That's correct.

10 Q. Did the maintenance department receive
11 any written instructions from whoever the
12 manufacturer of the cable was with regard to
13 preventive maintenance?

14 A. Not since I have been with the company
15 or that I'm aware of.

16 Q. You haven't seen any such written
17 instructions?

18 A. I have not.

19 Q. Do the drivers play any role in
20 maintaining their trucks, like looking them over and
21 inspecting them?

22 MR. KOUSTMER: Objection. Form.

23 Q. What role do the drivers play with
24 respect to preventive maintenance with regard to
25 their trucks?

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1 A. They absolutely play a role. They are
2 required by not only Allied but DOT to perform a
3 posttrip, pretrip inspection on their equipment and
4 to note any deficiencies in the equipment and turn
5 that in to the dispatch in the shop office.

6 Q. Did the maintenance department order the
7 new stainless steel cables to replace the initial
8 cable supplied by Delavan on the trucks?

9 A. As a replacement part, yes.

10 Q. You're not aware of any difficulty
11 incurred in the supply of those replacement parts?

12 A. I am not.

13 Q. Did Phil Watkins purchase any stainless
14 steel cable on his own authority?

15 A. I would say that he worked with the
16 local supplier to come up with the cable, so,
17 therefore, the answer to that would be yes.

18 Q. This was during the study?

19 A. During the test.

20 Q. Once the decision was made with respect
21 to the dealing with the galvanized cable issue, where
22 did this new stainless steel cable get ordered from?

23 A. They were ordered from GTS.

24 MR. WINTER: I have nothing further.

25 FURTHER CROSS-EXAMINATION

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1 BY MR. KOUSTMER:

2 Q. Did your department -- you're the senior
3 vice president of maintenance, correct?

4 A. Correct.

5 Q. Okay. And so I think you testified
6 before that the safety committee didn't send you
7 anything or the Allied -- you wouldn't be in their
8 flow chart, right?

9 A. That's correct.

10 Q. So you didn't know of any falls
11 whatsoever, correct?

12 A. That's correct.

13 Q. Okay. And you didn't know of any broken
14 cables?

15 A. That's correct.

16 Q. Okay. But the safety people aren't
17 reporting to you, correct?

18 A. That is also correct.

19 Q. Did you send out any instructions
20 whatsoever? He asked you about some instructions.
21 But did you send out any instructions as it relates
22 to the cable? Anything in writing?

23 A. No, I did not.

24 Q. So there's no instructions whatsoever
25 sent out by the maintenance department involving

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1 these cables?

2 A. No, there's not.

3 Q. Of any kind? Not just what your
4 attorney was talking about, but of any kind?

5 A. The only instruction we would have sent
6 would have been to the parts warehouse to change to
7 the stainless steel cable, or to the parts warehouse
8 to change to the most recent design with the eyebolt,
9 but not to our terminals.

10 Q. Nothing was sent of any kind to the
11 terminals?

12 A. No.

13 MR. KOUSTMER: Okay. That's all.

14 MR. WINTER: We will need signature.

15

16

17

ROBERT FERRELL

18

19

20

- - -

21

DEPOSITION CONCLUDED AT 2:21 P.M.

22

- - -

23

24

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1 C E R T I F I C A T E

2 STATE OF OHIO :
 : SS
 3 COUNTY OF CLERMONT :

4 I, Debra J. Henderson, RPR, the undersigned, a
 5 duly qualified and commissioned notary public within
 6 and for the State of Ohio, do hereby certify that
 7 before the giving of his aforesaid deposition, ROBERT
 8 FERRELL was by me first duly sworn to depose the
 9 truth, the whole truth and nothing but the truth;
 10 that the foregoing is the deposition given at said
 11 time and place by ROBERT FERRELL; that said
 12 deposition was taken in all respects pursuant to
 13 stipulations of counsel; that I am neither a relative
 14 of nor employee of any of the parties or their
 15 counsel, and have no interest whatever in the result
 16 of the action; that I am not, nor is the court
 17 reporting firm with which I am affiliated, under a
 18 contract as defined in Civil Rule 28(D).

19 IN WITNESS WHEREOF, I hereunto set my hand and
 20 official seal of office at Cincinnati, Ohio, this
 21 ____ day of _____, 2003.

22

23

My commission expires: Debra J. Henderson, RPR
 24 May 8, 2005. Notary Public - State of Ohio

25

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